REMARKS

Applicants' claims have been amended to better clarify Applicants' claimed invention. Applicants' claims stand rejected under 35 USC 112, second paragraph, as being indefinite with respect to the element "normal drive operations." It is well-settled that an "Applicant may be his or her own lexicographer as long as the meaning assigned to the term is not repugnant to the term's well known usage. MPEP 2111.01; *In re Hill*, 161 F.2d 367, 73 USPQ 482 (CCPA 1947). In the Specification, Applicants define the element normal drive operation to mean reading and/or writing data to/from data storage media. *See*, Specification at Page 14 / Lines 16-18. Applicants have amended their claims herein to replace the element "normal drive operation" with -- reading and/or writing data to/from data storage media--.

Claims 4, 12, and 20, are amended herein to recite, *inter alia*, a method to, computer readable program code comprising a series of computer readable program steps to effect, and a computer program product comprising computer readable program code which causes a programmable computer processor to, receive a code update at a data storage device while that data storage device reads and/or writes data to and/or from data storage media. Support can be found in original claims 1, 9, and 17, and in the Specification at Page 14 / Lines 16-18 (definition of "normal drive operation"). Claims 4, 12, and 20, are further amended herein to recite a method, computer readable program code comprising a series of computer readable program steps to effect, and a computer program product comprising computer readable program code which causes a programmable computer processor to, receive a host computer command, and to determine if that host computer command comprises an associated host time-out interval greater than the time required to activate the code update and perform the requested

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command. Support can be found in the Specification at Page 19 / Lines 12-14.

No new matter has been entered. Reexamination and reconsideration of the application, as amended, is respectfully requested.

In the Office Action, the Examiner indicates that claims 5, 6, 13, 14, 21, and 22, stand objected to as depending from a rejected base claim, but would be allowable if rewritten in independent form including the elements of the base claim. Claim 5 is rewritten herein as an independent claim which includes the elements of claim 1. Claim 13 is rewritten herein as an independent claim which includes the elements of claim 9. Claim 21 is rewritten herein as an independent claim which includes the elements of claim 17.

Claims 7 and 8 are amended herein to depend from claim 5, as amended herein. Claims 15 and 16 are amended herein to depend from claim 13, as amended herein. Claims 23 and 24 are amended herein to depend from claim 21, as amended herein.

Claims 4, 12, and 20, stand rejected under 35 USC 102(e) as being anticipated by Bartel et al. (U.S. Pat. No. 6,754,895). "A claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference." *Verdegaal Bros. v. Union Oil Co. of Cal.*, 814 F.2d 628, 631, 2 USPQ2d 1051, 1053 (Fed.Cir. 1987); MPEP 2131. Moreover, "[t]he identical invention must be shown in as complete detail as is contained in the . . . claim." *Richardson v. Suzuki Motor Co.*, 868 F.2d 1226, 1236, 9 USPQ2d 1913, 1920 (Fed.Cir. 1989).

Bartel et al. teach a method and system to automatically update the firm of a hand-held device. Col 2 / Lines 47-48. Bartel et al. nowhere teach or suggest an apparatus or method that receives a code update for a data storage device, receives a host computer command,

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determines if that host computer command comprises an associated host time-out interval greater than the time required to activate the code update and perform the requested host computer command, and if the host computer command comprises an associated host time-out interval greater than the time required to activate the code update and perform the requested command then activates the code update and performs the request host computer command, as recited in Applicants' claims 4, 12, and 20, as amended herein

This being the case, Applicants respectfully submit that claims 4, 12, and 20, as amended herein, are patentable over Bartel et al.

Having dealt with all of the outstanding objections and/or rejections of the claims, Applicants submit that the application as amended is in condition for allowance, and an allowance at an early date is respectfully solicited. In the event there are any fee deficiencies or additional fees are payable, please charge them, or credit an overpayment, to our Deposit Account No. 502262.
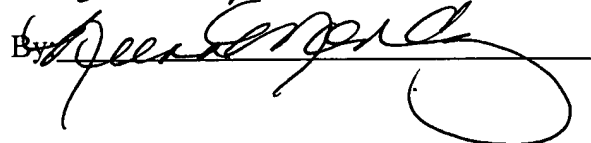
Respectfully submitted,

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CERTIFICATE OF MAILING

I hereby certify that this correspondence is being deposited with the United States postal Service as First Class Mail in an envelope addressed to: Commissioner for Patents, P.O. Box 1450, Alexandria, Virginia 22313-1450 on _August 29, 2005_, at Tucson, AZ.

By_____

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